

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

FILED  
DEC 21 2009  
CLERK

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ROBERT G. ADAMS,

Plaintiff,

-vs-

MICHAEL J. ASTRUE,  
Commissioner of Social Security

Defendant.

CIV. 08-4139

OPINION AND ORDER

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This Court referred the case to United States Magistrate Judge John E. Simko for the purpose of issuing a Report and Recommendation. The Magistrate Judge has recommended that the Commissioner's denial of benefits be reversed and remanded to the Social Security Administration for further administrative proceedings.

A remand pursuant to sentence four of 42 U.S.C. § 405(g) is proper when the district court makes a substantive ruling regarding the correctness of the Commissioner's decision and remands the case in accordance with such ruling. Buckner v. Apfel, 213 F.3d 1006, 1010 (8<sup>th</sup> Cir. 2000). Remand with instructions to award benefits is appropriate "only if the record overwhelmingly supports such a finding." Buckner at 1011. The Court has carefully reviewed the Magistrate Judge's Report and Recommendation and the record of the administrative proceedings. After having reviewed the record, the Court agrees with the Magistrate Judge's Report and Recommendation. The Administrative Law Judge improperly disregarded relevant expert opinion, including that of the treating physician, Dr. Olson and psychologist Carol Kuntz. The Court agrees with the

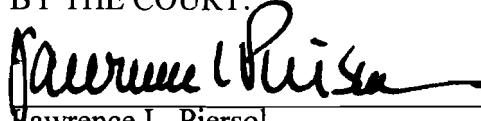
Administrative Law Judge in disregarding the unsigned report of Dr. Buchowski. In addition there is further lay and expert evidence which the Administrative Law Judge did not have an opportunity to consider. Accordingly, it is hereby

ORDERED that:

1. The Magistrate Judge's Report and Recommendation (Doc. 20) is ADOPTED by the Court.
2. Plaintiff's Motion for Summary Judgment (Doc. 14) is GRANTED.
3. The Commissioner's decision is REVERSED under sentence four of 42 U.S.C. § 405(g) and the case is REMANDED to the Commissioner for further administrative proceedings.

Dated this 21<sup>st</sup> day of December, 2009.

BY THE COURT:



Lawrence L. Piersol  
United States District Judge

ATTEST:

JOSEPH HAAS, Clerk

By Joe Peter, Deputy